

General Information Letter: Delivery of tangible personal property by private carrier is not protected activity under Public Law 86-272.

January 11, 2000

Dear:

This is in response to your letter dated October 5, 1999, in which you request information regarding nexus determination where deliveries are made into Illinois by means of a private carrier. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

We are currently conducting a nexus review of one of our clients. In an effort to provide them accurate advice, we are requesting that you provide any information regarding the current state policy related to deliveries with a company vehicle into the state. This request is not for a formal legal opinion but rather simply an informational response only.

Facts

Company A is a chemical additives manufacturer with two (2) plants, neither of which is in the state of Illinois. Company A utilizes an in house sales staff and has no physical presence in the state of Illinois. Other than delivery activities, no other company activities in Illinois exceed the protection of P.L. 86-272. The company delivers its product by three (3) means of transportation: (1) company owned trucks, (2) owned or leased railcars, and (3) third party common carriers.

Questions

1. Based on the facts enumerated above, would deliveries by Company A from a point outside of Illinois to customers located in the state of Illinois utilizing company owned vehicles exceed the protection of P.L. 86-272 and create nexus?
2. Would deliveries utilizing owned or leased railcars from a point outside of the state create nexus?

Response

Due to the fact specific nature of a nexus determination, the Department does not issue rulings determining whether a particular taxpayer has established nexus with the state of Illinois. Therefore, it is only in the context of an audit, where all facts and circumstances are known to the Department, that a nexus determination may be made. This being said, we are able to provide for your general information the following analysis in light of the hypothetical situation presented in your letter.

Under the authority of Section 201 of the Illinois Income Tax Act ("IITA"; 35 ILCS 5/101 et seq.), Illinois imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The State's ability to impose such a tax is limited however by Public Law 86-272 (15 U.S.C. Sections 381-384). Public Law 86-272 provides immunity from state income taxation for out-of-state corporations whose only activity within the state is limited to solicitation of orders for sales of tangible personal property, where the orders are accepted or rejected outside of the State, and, where accepted, such orders are filled by shipment or delivery from a point outside the State.

An out-of-state corporation can lose this immunity where its activities within the state exceed the mere solicitation standard of Public Law 86-272. A corporation's activities in Illinois beyond solicitation that are more than *de minimis*, will establish nexus with Illinois thereby requiring its business income attributable to its Illinois activities to be apportioned to this State under IITA Section 304, a copy of which has been enclosed for your reference. Any income that is apportioned to Illinois will be subject to taxation under Section 204.

Based on the hypothetical situations presented in your letter, Company A would establish nexus with Illinois in both situations described unless the activities were *de minimis*. If an out-of-state corporation's activities are limited to those protected under Public Law 86-272, then such corporation will not be subject to taxation in Illinois when shipments or deliveries are made into Illinois by a third-party-owned means of shipment or delivery. However, since Company A is the owner of the means of shipment in both hypothetical situations, Company A will have sufficient connection with Illinois to establish nexus and will be subject to Illinois income taxation. In regards to leasing rather than owning a railcar used for shipment, Company A may still establish nexus in situations where a leased railcar would be considered a private carrier, such as where there is a long-term leasing of the means of shipment.

I hope the information provided has sufficiently answered your request. As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department.

Sincerely,

Dana Deen Kinion
Associate Counsel-- Income Tax